

## MEMORANDUM

Agenda Item No. 7(F)

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**TO:** Honorable Chairman Joe A. Martinez  
and Members, Board of County Commissioners

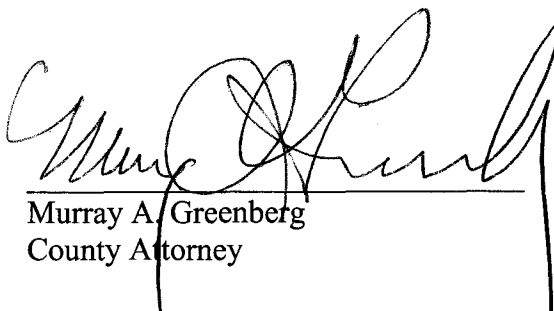
**DATE:** December 5, 2006

**FROM:** Murray A. Greenberg  
County Attorney

**SUBJECT:** Ordinance amending Chapter  
11A of the Code relating to  
discrimination in housing,  
public accommodations,  
employment and family  
leave

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The accompanying ordinance was prepared and placed on the agenda at the request of  
Commissioner Barbara J. Jordan.



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Murray A. Greenberg  
County Attorney

MAG/bw

# Memorandum

MIAMI-DADE  
COUNTY

**Date:** December 5, 2006

**To:** Honorable Chairman Joe A. Martinez  
and Members, Board of County Commissioners

**From:** George M. Burgess  
County Manager

**Subject:** Ordinance Amending Chapter 11A of the Code of Miami-Dade County; Relating to Discrimination in Housing, Public Accommodations, Employment and Family Leave

The ordinance amending Chapter 11A of the Code of Miami-Dade County relating to discrimination in housing, public accommodations, employment, and family leave may have a positive fiscal impact to Miami-Dade County.

The proposed ordinance recommends several edits to Chapter 11A, including:

- establishing the position of Hearing Officer and offering complainants the option of having an administrative appeal hearing with the Hearing Officer rather than an appeal hearing with the Equal Opportunity Board (EOB). The Hearing Officer is not entitled to compensation except for parking fee and mileage reimbursement. The Department of Human Services estimates that these costs would be minimal;
- increasing the membership of the EOB from 13 to 26 members, two (2) appointed by each Commissioner which would not result in an increase in the number of scheduled hearings, but would provide the EOB staff with the flexibility of rotating available board members to hearing panels;
- the extension of deadlines for both appeals and employer response time; and
- giving authority to the EOB to impose civil fines in cases of public accommodations after a finding of probable cause may generate some revenue for Miami-Dade County based on a \$10,000 fine for the first finding of cause and up to \$50,000 for two or more offenses; however, since there is no history on the application of this option, it is difficult at this time to accurately estimate potential revenues from these fines.

  
Assistant County Manager

Fiscal00506



# MEMORANDUM

(Revised)

**TO:** Honorable Chairman Joe A. Martinez  
and Members, Board of County Commissioners

**DATE:** December 5, 2006

**FROM:** Murray A. Greenberg  
County Attorney

**SUBJECT:** Agenda Item No. 7(F)

Please note any items checked.

- ☐ "4-Day Rule" ("3-Day Rule" for committees) applicable if raised
- ☐ 6 weeks required between first reading and public hearing
- ☒ 4 weeks notification to municipal officials required prior to public hearing
- ☐ Decreases revenues or increases expenditures without balancing budget
- ☐ Budget required
- ☐ Statement of fiscal impact required
- ☐ Bid waiver requiring County Manager's written recommendation
- ☐ Ordinance creating a new board requires detailed County Manager's report for public hearing
- ☐ Housekeeping item (no policy decision required)
- ☐ No committee review

Approved \_\_\_\_\_ Mayor

Agenda Item No. 7(F)

Veto \_\_\_\_\_

12-5-06

Override \_\_\_\_\_

ORDINANCE NO. \_\_\_\_\_

ORDINANCE AMENDING, ARTICLES I, II, III AND IV, OF CHAPTER 11A OF THE CODE OF MIAMI DADE COUNTY, FLORIDA, RELATING TO DISCRIMINATION IN HOUSING, CREDIT AND FINANCING PRACTICES, PUBLIC ACCOMMODATIONS, AND EMPLOYMENT; PROVIDING SAVINGS CLAUSE, SEVERABILITY, INCLUSION IN THE CODE AND AN EFFECTIVE DATE

BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA:

Section 1. Section 11A-1 of the Code of Miami-Dade County, Florida is hereby amended to read as follows:<sup>1</sup>

>>(5) *Ex parte communications.* Except for ex parte applications for subpoenas pursuant to this chapter, no person shall make any ex parte communication, relative to any pending case before the Equal Opportunity Board, to any Board member, or at any stage of a proceeding after the filing of a charge or complaint, by any party to the proceeding, or by any person who has a direct or indirect interest in the proceeding, or by any authorized representative or counsel. Any violation of this section shall be reported, in writing, by the Board member affected; and the report, which shall include a description of the substance of the communication, any response, and a copy of any written communication, shall be part of the record.<<

\* \* \*

Section 2. Section 11A-2 of the Code of Miami-Dade County, Florida is hereby amended to read as follows:

**Sec. 11A-2. Definitions**

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<sup>1</sup> Words stricken through and/or [[double bracketed]] shall be deleted. Words underscored and/or >>double arrowed<< constitute the amendment proposed. Remaining provisions are now in effect and remain unchanged.

\* \* \*

(4) *Complainant* shall mean any person or persons alleging a discriminatory act or practice prohibited by this chapter that has occurred ~~[[and]]~~ >>or<< is about to occur and who has filed a written complaint.

(5) *Conciliation* >>Agreement<< shall mean a written agreement resolving or otherwise disposing of a complaint and which is entered into by the parties and the Director prior to a hearing in front of the board.

\* \* \*

>>(19) *Mediation* shall mean an informal conference held with a neutral third party to help the parties resolve their disputes prior to the investigation of the complaint, or at any time during the investigation of the complaint.

(20) *Hearing officer* shall mean an employee of the Division of Administrative Hearings within the State of Florida, Department of Administration, employed to conduct hearings pursuant to F.S. chapter 120, or other person selected by the Chairperson of the Equal Opportunity Board, or his or her designee, to conduct a hearing pursuant to this chapter from a pool of hearing officers, who are members of the Florida Bar in good standing. The hearing officers shall serve for a term not to exceed two (2) years and shall not be entitled to compensation; however, they shall receive reimbursement for parking in county garages and for mileage for any hearing-related business. Such reimbursement shall be consistent with County policy.

(21) *Prevailing party* shall have the same meaning as such term has in section 722 of the Revised Statutes of the United States (42 U.S.C. 1988).<<

Section 3. Section 11A-3 of the Code of Miami-Dade County, Florida is hereby amended to read as follows:

**Sec. 11A-3. Office of the Director established.**

\* \* \*

5

(2) The duties, functions, powers and responsibilities of the Director include but are not limited to, the following:

\* \* \*

(f) Providing assistance and direction in all matters relating to discrimination in housing, credit and finance, public accommodations, employment, ~~[[and]]~~ family leave~~[[;]]~~ >>and domestic violence leave;<<

(g) Publishing and disseminating information and educational materials relating to discrimination in housing, credit and finance, public accommodations, employment, ~~[[and]]~~ family leave >>and domestic violence leave;<<

(h) Issuing notice of a complainant's private right to sue under Articles ~~[[IV]]~~ >>II, III, IV, V and VIII of this chapter<< upon a written request from complainant received not sooner than one hundred ~~[[eight]]~~ >>eighty<< (180) days after the filing of a charge or amended charge of a violation of this chapter;

\* \* \*

(3) When necessary to vindicate the public interest, the Director may, with the approval of the County Attorney, have the County designated >>as<< a party in any proceeding under this chapter, and in connection therewith, shall be governed by the same procedures applicable to any other party to a charge of violation of this chapter. In any proceeding in which the County participates as a party, the Director, with the approval of the County Attorney, may hire special counsel.

Section 4. Section 11A-4 of the Code of Miami-Dade County, Florida is hereby

amended to read as follows:

**Sec. 11A-4. Equal Opportunity Board established.**

(1) *Creation of the Board.* The Dade County Equal Opportunity Board is hereby created and established. The Board shall consist of ~~[[thirteen-(13)]]~~ >>twenty six (26)<< members appointed by the Board of County Commissioners. >>Each

member of the Board of County Commissioners may appoint two persons to the Equal Opportunity Board.<<

- (2) *Qualifications of Members.* Members of the Board shall be permanent residents and electors of Dade County, Florida. ~~[[Appointments shall be made by the County Commission on the basis of community representation, civic pride, integrity, experience and interest in the area of Equal Opportunity]]>>~~Of at least one of the two appointments by each County Commissioner, consideration for membership may be given to representatives from the following fields:

- (a) an attorney who is a member in good standing of the Florida Bar;
- (b) a member of the business community;
- (c) a representative of the real estate industry;
- (d) a member of a non-profit civil rights organization;
- (e) a small business owner;
- (f) a representative of municipal government;
- (g) a representative of an employee organization;
- (i) a representative of persons with disabilities; and (j) a representative of the banking industry.

Membership shall be made on the basis of civic pride, integrity, experience and interest in the area of equal opportunity, and be representative of the County's population and reflective of the racial and ethnic make-up of Miami-Dade County, in addition to geographic, economic and gender considerations.<<

Section 5. Section 11A-5 of the Code of Miami-Dade County, Florida is hereby amended to read as follows:

**Sec. 11A-5. Duties and powers of the Board.**

The Equal Opportunity Board shall have the following duties, functions, powers and responsibilities:

\* \* \*

- (7) To issue such other final orders as, in the judgment of the Hearing Panel, will carry out the purposes of this chapter, including but not limited to:

\* \* \*

>>(d) Awarding of front pay, to the extent that the calculation of any such front pay is quantifiable and reasonably definite.<<

\* \* \*

- (12) At the conclusion of a hearing and upon a finding of housing discrimination in violation of Article II of this chapter, to recommend that the county attorney commence a civil action on behalf of the County for fines pursuant to ~~[[s. 11A-22]]~~ >>Section 11A-17<<.

Section 6. Section 11A-6 of the Code of Miami-Dade County, Florida is hereby amended to read as follows:

**Sec. 11A-6. Discretionary review; request for rehearing.**

\* \* \*

- (5) The filing of a request for rehearing shall toll the time for commencing an appeal pursuant to ~~[[s. 11A-9]]~~ >>Section 11A-8.<<

Section 7. Section 11A-7 of the Code of Miami-Dade County, Florida is hereby amended to read as follows:

**Sec. 11A-7. Enforcement of final order.**

If the Board determines that any respondent has committed an unlawful act prohibited by this chapter, and said respondent refuses to comply with or obey the final order of the Board or Director, the Board on behalf of the County or the complainant may petition the court of ~~[[appropriate]]~~ >>competent<< jurisdiction for enforcement of the final order.

\* \* \*



Section 8. Section 11A-9 of the Code of Miami-Dade County, Florida is hereby amended to read as follows:

**Sec. 11A-9. Remedial action.**

If at any time after a complaint has been filed, the Director or the Board, >>upon conferring with the County Attorney, has reasonable cause to<< believe that appropriate civil action to preserve the status quo or to prevent irreparable harm appears advisable, the Director or the Board shall refer the complaint to the County Attorney, >>who may, at his or her discretion and a determination that the complaint raises a matter of great public importance, commence a<<[[~~and request that the County Attorney take appropriate~~]] civil action to preserve the status quo or to prevent irreparable harm. Any temporary restraining order or other order granting preliminary or temporary relief shall be issued in accordance with the Florida Rules of Civil Procedure. The commencement of a civil action under this chapter shall be in addition to all remedies otherwise available under federal and state law, municipal ordinances and this chapter.

\* \* \*

**ARTICLE II. HOUSING**

Section 9. Section 11A-11 of the Code of Miami-Dade County, Florida is amended to read as follows:

**Sec. 11A-11. Definitions**

\* \* \*

>>(10) Conciliation shall mean the attempted resolution of issues raised by a complaint or by the investigation of such complaint, through informal negotiations involving the complainant, the respondent, and the Director.

(11) Person shall mean one or more individuals, corporations, partnerships, associations, labor organizations, legal representatives, mutual companies, joint-stock companies, trusts, unincorporated organizations, trustees, trustees in cases under Title 11 [of the United States Code], receivers, and fiduciaries.<<

Section 10. Section 11A-12 of the Code of Miami-Dade County, Florida is hereby amended to read as follows:

**Sec. 11A-12. Unlawful housing practices**

(1) *Discrimination in sale or rental of housing and other prohibited practices.* It shall be unlawful for any person, owner, financial institution, real estate broker, real estate agent or any representative of the above to engage in any of the following acts because of race, color, religion, >>ancestry,<< national origin, age, sex, pregnancy, disability, marital status, familial status or sexual orientation of a prospective buyer, renter, lessee or any person associated with a prospective buyer, renter or lessee.

\* \* \*

(2) *Reasonable modification and reasonable accommodation for disabled.* It shall be a discriminatory housing practice to:

\* \* \*

(c) In connection with the design and construction of covered multifamily dwellings submitted for building permit or on after January 13, 1990 to fail to design and construct those housing accommodations in such manner, that:

\* \* \*

(v) Compliance with the appropriate requirements of the ~~[[Federal Fair Housing Accessibility Guidelines]]~~ >>American National Standards Institute<< for buildings and facilities providing accessibility and usability for physically disabled persons, >>commonly cited as "ANSI A117.1 (1986)"<<, suffices to satisfy the requirements of this subsection (c). Public areas shall also comply with the standards set forth in the Americans with Disabilities Act Accessibility Guidelines.

\* \* \*

Section 11. Section 11A-14 of the Code of Miami-Dade County, Florida is hereby amended to read as follows:

**Sec. 11A-14. Procedures for housing discrimination complaint.**

\* \* \*

(2) *Director's actions upon receipt of housing discrimination complaint.* Upon the filing of such complaint, the Director shall serve notice upon the complainant acknowledging such filing and advising the complainant of the time limits provided under this article, >>including procedural rights and obligations.<< In a case of a housing discrimination complaint filed under Title VIII of the Civil Rights Act of 1968, as amended, the complainant shall also be advised of the choice of forums provided under the Act.

(3) *Respondent*

(a) Within ten (10) days of the filing of the complaint, the Director shall serve a copy of the complaint and a written notice on the respondent identifying the alleged discriminatory housing practice and setting forth the rights and obligations of the parties including, but not limited to the right to a fair and full hearing on the matter before the Equal Opportunity Board >>or a Hearing Officer.<< Such service shall be by certified mail.

\* \* \*

(5) *Subpoenas*

(a) ~~[[Upon written application to the Board, a party shall be entitled to the issuance of a reasonable number of subpoenas to compel the attendance of witnesses and/or the production of documents at a hearing or at a deposition. Subpoenas issued at the request of a party shall show on their face the name and address of such party, shall state that they were issued at the party's request and shall be subject to the same limitations as subpoenas issued by the County Court of Dade County, Florida.~~

(b)]]>>(a)<< Witnesses summoned by subpoena of the Board shall be entitled to the same witness and mileage fees as are witnesses in proceedings in the County Court of >>Miami-<<Dade County, Florida. Fees payable to a witness summoned by subpoena issued at the request of a party shall be paid by

the party, or where the party is unable to pay due to ~~[[indigency]]~~ >>indigence<<, shall be paid by the Board.

~~[[e)]]~~ >>(b)<< Within ten (10) days after service of a subpoena upon any person, such person may petition the Board to revoke or modify the subpoena. The Board shall grant the petition if it finds that the subpoena requires appearance at an unreasonable time or place, that it requires production of evidence which does not relate to any matter under investigation, that it does not describe with sufficient particularity the evidence to be ~~[[produce]]~~ >>produced<<, that compliance would be unduly onerous, or for other good reason.

~~[[d)]]~~ >>(c)<< In the case of contumacy or refusal to obey a subpoena, the Board or any party may seek enforcement of a subpoena issued under the authority of this chapter by filing a petition for enforcement in the County Court of >>Miami-<< Dade County, Florida.

~~[[e)]]~~ >>(d)<< In any enforcement proceeding authorized by this chapter, the court may award to the prevailing party all or ~~[[party]]~~ >>part<< of the costs and Attorney's fees incurred in obtaining the court order as authorized by the Florida Rules of Civil Procedure;

~~[[f)]]~~ >>(e)<< Any person who willfully fails or neglects to attend and testify or to answer any lawful inquiry or to produce records, documents or other evidence, if in his or her power to do so, may be fined by the County Court of >>Miami-<< Dade County, Florida, not more than five hundred dollars (\$500.00) or imprisoned not more than sixty (60) days or both.

~~[[g)]]~~ >>(f)<< Any person who, with intent thereby to mislead the Board or the Director, makes or causes to be made any false entry or statement of fact in any report, account, record or other document submitted to the Board pursuant to its subpoena or other order or shall willfully neglect or fail to make or cause to be made full, true and correct entries in such reports, accounts, records or other documents, or shall willfully mutilate, alter or by any other means falsify any documentary evidence, may be fined by the County Court of >>Miami-<< Dade County, Florida, not more than five hundred dollars (\$500.00) or imprisoned not more than sixty (60) days or both.

\* \* \*

(8) *Conciliation*

- (a) It is the policy of the Director and the Board to encourage conciliation of complaints. The Director will work with the parties in an attempt to conciliate the complaint. A conciliation agreement arising out of such conciliation shall be an agreement between the respondent and the complainant and shall be subject to approval by the Director.>>Consistent with federal fair housing laws, a conciliation agreement shall be made public unless the complainant and respondent otherwise agree and the Director determines that disclosure is not required to further the purpose of the federal Fair Housing Act or this article.<<

\* \* \*

(9) *Hearing in front of the Equal Opportunity Board >>or Hearing Officer*<<

\* \* \*

- (f) In any hearing before the Board >>or Hearing Officer<< pursuant to this section, the respondent may file a written answer to the complaint. All parties shall appear at the hearing in person, with or without counsel, and may submit evidence, cross-examine witnesses, obtain issuance of subpoenas and otherwise be heard. Testimony taken at the hearing shall be under oath ~~[[and a transcript shall be made available at cost to any interested party]]~~.>>Upon written application to the Board, a party shall be entitled to the issuance of a reasonable number of subpoenas to compel the attendance of witnesses and/or the production of documents at a hearing or at a deposition in connection with a hearing. Subpoenas issued at the request of a party shall show on their face the name and address of such party, shall state that they were issued at the party's request and shall be subject to the same limitations as subpoenas issued by the County Court of Miami-Dade County, Florida.<<

\* \* \*

Section 12. Section 11A-15 of the Code of Miami-Dade County is hereby amended to read as follows:

**Sec. 11A-15. Enforcement by private persons.**

- (1) A complainant may file a civil action in a court of ~~[[appropriate]]~~ >>competent<< jurisdiction no later than two (2) years after the alleged discriminatory housing practice has occurred or terminated or after a breach of a conciliation agreement. A person aggrieved by an alleged housing discrimination practice or breach may file a civil action regardless of whether he or she has filed a complaint under this article and regardless of the status of any complaint filed under this article.

\* \* \*

**ARTICLE III. PUBLIC ACCOMMODATIONS**

Section 13. Section 11A-20 of the Code of Miami-Dade County, Florida is hereby amended to read as follows:

\* \* \*

**Sec. 11A-20. Places of public accommodation.**

\* \* \*

(g) a terminal, depot, or other station used for specified public transportation~~[[;]]~~, >>including but not limited to taxis, limousines and buses.<<

\* \* \*

>>(m) any area or structure provided for the purpose of storing personal property.<<

Section 14. Section 11A-21 of the Code of Miami-Dade County, Florida is hereby amended to read as follows:

**Sec. 11A-21. Fair pricing.**

In any place of public accommodation as defined in Section 11A-20 ~~[[e)]]~~ >>(c)<<, the distribution of ticket prices for seating

reserved for persons with a disability, wherever located, shall be equal in proportion to the distribution of ticket prices available in the facility as a whole, provided however, that the maximum price for tickets for disabled seating shall be no greater than the maximum price charged for other types of seating in the same area of the facility.

Section 15. Section 11A-22 of the Code of Miami-dade County, Florida is hereby amended to read as follows:

**Sec. 11A-22. Exceptions to unlawful public accommodations practices.**

\* \* \*

(5) Nothing in this article shall apply with respect to a religious organization, association, society or any non-profit institution or organization operated, supervised or controlled by or in conjunction with any such group, from limiting its goods, facilities, services, privileges or advantages to persons of the same religion or from giving preference to any such person, however, that religious organization, association or society shall not restrict membership based on race, color, national origin, ancestry, >> sex, pregnancy, age, marital status, familial status<< or disability. Furthermore, nothing in this article relating to unlawful public accommodation practices based on sexual orientation shall pertain to any religious organization, association, society or any non-profit institution or organization operated, supervised or controlled by or in conjunction with a religious organization, association or society.

\* \* \*

Section 16. Section 11A-23 of the Code of Miami-Dade County, Florida is hereby amended to read as follows:

**Sec. 11A-23. Procedures for public accommodations complaint.**

\* \* \*

*(3) Respondent*

(a) Upon the filing of any complaint, the Director shall promptly serve the complaint and a written notice on the respondent or person charged with the commission of a discriminatory practice, setting forth the rights and obligations of the parties including, but not limited to the right to a fair and full hearing on the matter

15

before the Equal Opportunity Board >>or a Hearing Officer<<.  
Such service shall be by certified mail.

\* \* \*

(5) *Subpoenas*

- (a) ~~[[Upon written application to the Board a party shall be entitled to the issuance of a reasonable number of subpoenas to compel the attendance of witnesses and/or the production of documents at a hearing or at a deposition. Subpoenas issued at the request of a party shall show on their face the name and address of such party, shall state that they were issued at the party's request and shall be subject to the same limitations as subpoenas issued by the County Court of Dade County, Florida.]]~~

~~[[~~(b)~~]]~~ >>(a)<< Witnesses summoned by ~~[[the]]~~ subpoena of the Board shall be entitled to the same witness and mileage fees as are witnesses in proceedings in the County Court of >>Miami-<<Dade County, Florida. Fees payable to a witness summoned by subpoena issued at the request of a party shall be paid by the party, or where the party is unable to pay >>due to indigence<<, shall be paid by the Board.

~~[[~~(e)~~]]~~ >>(b)<< Within ten (10) days after service of a subpoena upon any person, such person may petition the Board to revoke or modify the subpoena. The Board shall grant the petition if it finds that the subpoena requires appearance or attendance at an unreasonable time or place, that it requires the production of evidence which does not relate to any matter under investigation, that it does not describe with sufficient particularity the evidence to be produced, that compliance would be unduly onerous, or for other good reason.

~~[[~~(d)~~]]~~ >>(c)<< In the case of the contumacy or refusal to obey a subpoena, the Board or any party may seek enforcement of a subpoena issued under the authority of this chapter by filing a petition for enforcement in the County Court of >>Miami-<<Dade County, Florida;

~~[[~~(e)~~]]~~ >>(d)<< In any enforcement proceeding authorized by this chapter, the court may award to the prevailing party all or part of the costs and Attorney's fees incurred in obtaining the court order as authorized by the Florida Rules of Civil Procedure;



~~[(f)]~~>>(e)<< Any person who willfully fails or neglects to attend and testify or to answer any lawful inquiry or to produce records, documents or other evidence, if in his or her power to do so, may be fined by the County Court of >>Miami-<<Dade County, Florida, not more than five hundred dollars (\$500.00) or imprisoned not more than sixty (60) days or both.

~~[(g)]~~>>(f)<< Any person who, with intent thereby to mislead the Board or the Director, makes or causes to be made any false entry or statement of fact in any report, account, record or other document submitted to the Board pursuant to its subpoena or other order, or shall willfully neglect or fail to make or cause to be made full, true and correct entries in such reports, accounts, records or other documents, or shall willfully mutilate, alter, or by any other means falsify any documentary evidence, may be fined by the County Court of >>Miami-<<Dade County, Florida, not more than five hundred dollars (\$500.00) or imprisoned not more than sixty (60) days or both.

\* \* \*

(9) *Hearing in front of Equal Opportunity Board*>>or Hearing Officer<<

- (a) ~~[[If within ten (10)]]~~ >>Within fifteen (15)<<days after receipt of the Director's finding related to probable cause the respondent or the complainant >>may<< submit~~[[s]]~~ a written request for a hearing before the Board, ~~[[then such hearing shall be granted expeditiously.]]~~ >>or before a Hearing Officer. In conducting any hearing to determine whether a violation of this chapter has occurred, the Hearing Officer shall have the power to administer oaths, issue subpoenas, compel the production of and receive evidence. The determination of the Hearing Officer shall be subject to appeal to a court of competent jurisdiction in the same manner as a Final Order issued by the members of the Equal Opportunity Board. If a hearing before the Equal Opportunity Board is requested, such hearing shall be held in accordance with Section 11A-23 of this chapter, and the Board Hearing Procedures.<< A written request for a hearing submitted more than ~~[[ten (10)]]~~ >>fifteen (15)<< days after receipt of the Director's finding may be granted only upon a showing of good cause. The Director shall have the final authority in deciding whether good cause has been shown. No hearing may be had from the Director's decision that good cause has not been shown. No

hearing may be had from the Director's finding of lack of jurisdiction.

\* \* \*

Section 17. Section 11A-24 of the Code of Miami-Dade County, Florida is hereby amended to read as follows:

**Sec. 11A-24. Enforcement by private persons.**

(1) If within one hundred eighty (180) days after a ~~[[complainant]]~~ >>complaint<< is filed alleging discrimination, the Director has been unable to obtain voluntary compliance with the provisions of this chapter, the ~~[[aggrieved person]]~~ >>complainant<< may demand a notice of right-to-sue from the Director, the issuance of which shall terminate the jurisdiction of the Director and the Board over such complaint. Not later than ninety (90) days following receipt of the notice of right-to-sue, the ~~[[aggrieved person]]~~ >>complainant<< may commence a civil action in a court of ~~[[appropriate]]~~ >>competent<< jurisdiction against the respondent named in the complaint.

\* \* \*

Section 18. Section 11A-24.1 of the Code of Miami-Dade County, Florida is hereby created as follows:

**>>Sec. 11A-24.1. Civil Fines**

(1) At the conclusion of a hearing and upon a finding of public accommodations discrimination, the Board may consider fines without cost to the complainant. The Board may impose the following fines:

(a) Up to then thousand dollars (\$10,000.00) if the respondent has not previously been found guilty of a violation of this article;

(b) Up to twenty-five thousand dollars (\$25,000.00) if the respondent has been found guilty of one (1) prior violation of this article within the preceding five (5) years prior to filing of a complaint;

(c) Up to fifty thousand dollars (\$50,000.00) if the respondent has been found guilty of two (2) or more violations of this article within the preceding seven (7) years prior to filing of a complaint.

(2) In imposing a fine under this section, the Board shall consider the nature and circumstances of the violation, the degree of culpability, the history of prior violations of this article, the financial circumstances of the respondent and the goal of deterring future violations of this article.

(3) All fines pursuant to this article shall be paid to the Board of County Commissioners.<<

#### **ARTICLE IV. EMPLOYMENT**

Section 19. Section 11A-26 of the Code of Miami-Dade County, Florida is hereby amended as follows.

\* \* \*

##### **Sec. 11A-26. Unlawful employment practices.**

\* \* \*

(5) Exemptions to unlawful employment practices.

(a) Notwithstanding any other provision of this article it shall not be an unlawful employment practice:

\* \* \*

(iv) For an employer or employment agency or representative of either to give or to act upon the results of any professionally validated ability test provided that such test, its administration or action upon the result is not designed, intended or used to discriminate because of race, color, >>religion<<, ancestry, national origin, age sex, pregnancy, disability, marital status or sexual orientation.

\* \* \*

(b) Nothing contained in this article shall be interpreted to require any employer, employment agency, labor organization, or joint labor-management committee subject to this chapter to grant preferential treatment to any individual or to any group

because of the race, color, religion, sex, pregnancy, national origin, >>ancestry<<, age, disability, marital status, familial status or sexual orientation of such individual or group on account of an imbalance which may exist with respect to the total number or percentage of persons of any race, color, religion, sex, pregnancy, national origin, >>ancestry<<, age, ~~[[handicap]]~~ >>disability<<, marital status, familial status or sexual orientation in any community, section or other area of the county or in the available work force in any community, section or other area of the County.

\* \* \*

Section 20. Section 11A-28 of the Code of Miami-Dade County, Florida is hereby amended to read as follows:

**Sec. 11A-28. Procedures for employment discrimination complaints.**

(1) *Filing an employment discrimination complaint.* Any person aggrieved by an unlawful employment >>action<< prohibited by this article must file a written, signed complaint with the Director within one hundred eighty days (180) after the alleged unlawful practice occurs.

\* \* \*

(3) *Respondent.*

(a) Upon the filing of any complaint, the Director shall promptly serve the complaint and a written notice on the respondent or person charged with the commission of a discriminatory practice, setting forth the rights and obligations of the parties including, but not limited to the right to a fair and full hearing on the matter before the Equal Opportunity Board >>or a Hearing Examiner.<< Such service shall be by certified mail.

(c) Each respondent may file an answer to the complaint, not later than ~~[[ten (10)]]~~ >>twenty (20)<< days after receipt of the complaint and notice from the director.

\* \* \*

(5) *Subpoenas*

~~[[a]] Upon written application to the Board, a party shall be entitled to the issuance of a reasonable number of subpoenas to compel the attendance of witnesses and/or the production of documents at a hearing or at a deposition. Subpoenas issued at the request of a party shall show on their face the name and address of such party, shall state that they were issued at the party's request and shall be subject to the same limitations as subpoenas issued by the County Court of Dade County, Florida.]]~~

~~[[b]]~~>>(a)<< Witnesses summoned by ~~[[the]]~~ subpoena of the Board shall be entitled to the same witness and mileage fees as are witnesses in proceedings in the County Court of >>Miami-<<Dade County, Florida. Fees payable to a witness summoned by subpoena issued at the request of a party shall be paid by the party, or where the party is unable to pay >>due to indigence<<, shall be paid by the Board.

~~[[c]]~~>>(b)<< Within ten (10) days after service of a subpoena upon any person, such person may petition the Board to revoke or modify the subpoena. The Board shall grant the petition if it finds that the subpoena requires appearance or attendance at an unreasonable time or place, that it requires production of evidence which does not relate to any matter under investigation, that it does not describe with sufficient particularity the evidence to be produced, that compliance would be unduly onerous, or for other good reason.

~~[[d]]~~>>(c)<< In the case of the contumacy or refusal to obey a subpoena, the Board or any party may seek enforcement of a subpoena issued under the authority of this chapter by filing a petition for enforcement in the County Court of >>Miami-<<Dade County, Florida;

~~[[e]]~~ >>(d)<< In any enforcement proceedings authorized by this chapter, the court may award to the prevailing party all or part of the costs and Attorney's fees incurred in obtaining the court order as authorized by the Florida Rules of Civil Procedures;

~~[[f]]~~>>(e)<< Any person who willfully fails or neglects to attend and testify or to answer any lawful inquiry or to produce records, documents or other evidence, if in his or her power to do so, may be fined by the County Court of >>Miami-<<Dade County, Florida, not more than five hundred dollars (\$500.00) or imprisoned not more than sixty (60) days or both.

\* \* \*

(7) *Finding related to probable cause.*

(c) The Director's recommended order shall become final ~~[[ten (10)]]~~ >>fifteen (15)<< days after issuance, unless a hearing is requested pursuant to ~~[[11A-27(9)]]~~ >>Section 11A-28(9).<< The final investigative report and final order may be amended if additional evidence is later discovered and if amended shall become final ~~[[ten (10)]]~~ >>fifteen (15)<< days thereafter.

\* \* \*

(8) *Conciliation*

(a) It is the policy of the Director and the Board to encourage conciliation of charges. The Director will work with the parties in an attempt to conciliate the agreement. If possible, a written conciliation agreement resolving the dispute~~[[d]]~~ between the ~~[[aggrieved party]]~~ >>complainant<< and the respondent shall be executed prior to a finding related to probable cause. Any time until final ~~[[healing]]~~ >>hearing<< by the Board, the Director will work with the parties in an attempt to conciliate the complaint.

\* \* \*

(9) *Hearing in front of the Equal Opportunity Board >>or Hearing Examiner<<*

(a) ~~[[If within ten (10)]]~~ >>Within fifteen (15)<< days after receipt of the Director's finding related to probable cause the respondent or the complainant >>may<< submit~~[[s]]~~ a written request for a hearing before the Board, ~~[[then such hearing shall be granted expeditiously]]~~ >>or a Hearing Officer. In conducting any hearing to determine whether a violation of this chapter has occurred, the Hearing Officer shall have the power to administer oaths, issue subpoenas, compel the production of and receive evidence. The determination of the Hearing Officer is subject to appeal in a court of competent jurisdiction in the same manner as a Final Order issued by the members of the Equal Opportunity Board. If a hearing before the Equal Opportunity Board is requested, such hearing shall be held in accordance with Section 11A-28 of this chapter, and the Board's Hearing Procedures.<< A written request for a hearing submitted more than ~~[[ten (10)]]~~ >>fifteen (15)<<

days after receipt of the Director's finding may be granted only upon a showing of good cause. The Director shall have the final authority in deciding whether good cause has been shown. No hearing may be had from the Director's decision that good cause has not been shown. No hearing may be had from the Director's finding of lack of jurisdiction.

\* \* \*

(f) ~~[[If]]~~ >>In<< any proceeding under this article ~~[[he]]~~ >>the<< burden of proof rests upon the complainant.

\* \* \*

>> (10) *Enforcement by private persons.*

(a) If within one hundred eighty (180) days after a complaint is filed alleging discrimination, the Director has been unable to obtain voluntary compliance with the provisions of this Article, the aggrieved person may demand a notice of right-to-sue from the Director, the issuance of which shall terminate the jurisdiction of the Director and the Board over such a complaint. Not later than ninety (90) days following receipt of the notice of right-to-sue, the aggrieved person may commence a civil action in a court of competent jurisdiction against the respondent named in the complaint.

(b) If, in a private enforcement proceeding under this Article, the court finds that a discriminatory practice has occurred or is about to occur it may issue an order prohibiting the practice and providing affirmative relief from the effects of the practice, including temporary or permanent injunctive and other equitable relief, temporary restraining order, actual and punitive damages, reasonable attorney's fees, interest, costs or other appropriate relief.

(b) Upon request of the Board, the County Attorney may intervene on behalf of the County in an action brought under the provisions of this Article, if the Board certifies that the case is of great public importance to the citizens of Miami-Dade County.<<

Section 21. Section 11A-30 of the Code of Miami-Dade County is hereby amended to read as follows:

\* \* \*

**Sec. 11A-30. Definitions**

\* \* \*

(3) [~~Employee~~] >>Employer<< shall mean a person as defined in Section 11A-2(9) of this chapter which has in the regular course of business fifty (50) or more employees working in >>Miami<<Dade County for each working day during each of twenty (20) or more calendar work weeks in the current or preceding calendar year.

Section 22. The substantive rights that have been created and have accrued in whole or in part under Chapter 11A shall not be extinguished or in any way affected by the repeal and reenactment of Chapter 11A or by the renumbering of Chapter 11A.

Section 23. If any section, subsection, sentence, clause or provision of this ordinance is held invalid, the remainder of this ordinance shall not be affected by such invalidity.

Section 24. It is the intention of the Board of County Commissioners, and it is hereby ordained that the provisions of this ordinance, including the sunset provision, shall become and be made a part of the Code of Metropolitan <<Miami>> Dade County, Florida. The sections of this ordinance may be renumbered or relettered to accomplish such intention, and the word "ordinance" may be changed to "section," "article," or other appropriate word.



Section 25. This ordinance shall become effective ten (10) days after the date of enactment unless vetoed by the Mayor, and if vetoed, shall become effective only upon an override by this Board.

PASSED AND ADOPTED:

Approved by County Attorney as  
to form and legal sufficiency.



Prepared by:



Terrence A. Smith

Sponsored by Commissioner Barbara J. Jordan